

The Battle of Berkeley

By J. L. Pimsleur

A TALL, handsome, gray-haired minister rose to address the Berkeley City Council: "Christ said 'love thy neighbor,'" he reminded the Councilmen. "In the name of brotherhood, I implore you to pass this legislation."

A middle-aged woman with a foreign accent shouted: "Let them earn their privileges like other immigrants . . . I never had a Cadillac."

An Oriental student complained with a sigh: "Each year it is another struggle to get a decent room near the campus."

A political candidate cried: "This is a Communist attempt to stir up racial antagonism . . . a plot to Congoize our city."

A pretty housewife in a cashmere sweater demanded: "Protect our property rights! They are guaranteed by the Constitution."

And a real estate man warned: "If any such restrictive legislation is passed, both the city of Berkeley, through loss of taxes, and

This World's cover picture was taken by Art Frisch of The Chronicle from one of the whirlybirds of the San Francisco & Oakland Helicopter Airlines. Illustrations are by Robert Bastian.

the merchants, through loss of business, will be badly hurt."

These impassioned pleas, delivered at the Berkeley Little Theater during an open meeting last November 27, were only a minute sampling of the conflict in the community. For, by last week, Berkeley was a town in torment.

"Berkeley is at the crucial crossroads of its long and colorful history," one troubled City Councilman intoned. "If the decision we make is the right one, our outlook for the future is bright and progressive. But if the decision is the wrong one, or made too hastily, Berkeley may never recoup. The effect on our pride and reputation could be disastrous."

That "decision" to which the Councilman referred, involved the most controversial and emotionally charged piece of legislation ever considered by the Berkeley City Council—Ordinance No. 3915 N. S.

An historic piece of legislation, this was a city ordinance which would prohibit racial discrimination in the sale, rental or lease of homes and apartments—including single family dwellings—and provide stiff penalties for violations.

Every important problem, and there are many this year in Berkeley—taxation, re-

zoning, redevelopment, master planning, rapid transit, Aquatic Park and Marina development, to name a few—has been overshadowed by this single issue.

It is uppermost in the minds of the voters, and all other political decisions have been subordinated to it. It has become the focal point of the up-coming Berkeley municipal election on April 2. It is on the lips of nearly every citizen. It dominates campaign publicity, political advertising, public and private political statements.

Apartment house owners are concerned; the Berkeley Realty Board is anxious; the University is interested; private home owners are worried; and the politicians are watching and waiting.

It has split the city into pro and con camps. The Negro community, the white intelligentsia, students and church groups have generally rallied behind it. The realtors, the downtown business interests, income property owners, and taxpayer groups have generally lined up in opposition.

But its implications extend far beyond the confines of Berkeley itself. Whichever way Berkeley goes, it will have a profound effect on future civil rights legislation—in San Francisco, the Bay Area, the State—and possibly the Nation.

"The vote in Berkeley," predicts State Assemblyman W. Byron Rumford, "will have national and international significance, because of the . . . presence at the University of students from all parts of the world—students of many nationalities, colors and creeds."

SUCH a law had been brewing in Berkeley for a long time. On October 27, 1959, Municipal Judge Redmond Staats, speaking as chairman of a 14-man committee study-

ing racial problems in Berkeley's schools, warned the city's residents that they would have to "face reality."

"The whites are retreating to the hills, or over the hills into Contra Costa county," said Staats. "If this continues for another 20 years, we're either going to have a Mason-Dixon line down the center of the city, or a segregated city composed entirely of Negroes."

"If this happens," the Judge concluded, "it will mean Berkeley will have failed to put into practice our American beliefs." And he urged the appointment of a standing committee to study racial problems in Berkeley—before it was too late.

For two years, Staats' warning went virtually unheeded. Then, in June, 1961, Berkeley's Community Welfare Commission—under a mandate to "study and advise the City Council on matters of racial and intergroup relations"—deemed discrimination in housing to be of "vital concern to the entire community."

And the Commission asked the City Council to appoint a special citizens' com-

tee to Study Discrimination in Housing in Berkeley.

Carefully selected to represent a cross-section of the community, it included three realtors, three lawyers, a credit union employee, an insurance broker, a physicist, a physician, a printer, several housewives and a research sociologist.

Their first meeting was held in September, 1961, with subsequent public hearings conducted at least twice monthly until the following June. And last October, the results of the Committee's nine-month investigation were released by the Welfare Commission.

It was a remarkable document, described by one Berkeley resident in a letter to the City Council as "a unique model for the intelligent and effective use by a community of its own intellectual resources, in coping with a serious and dangerous common problem."

In the course of its investigation, the Committee interviewed scores of persons who charged that they had been refused the right to rent or buy in Berkeley, for purely racial reasons. To verify the charges, the Committee also used a number of independent tests, involving Negro, mixed and white couples.

Eight real estate salesmen were approached using the team method (a Negro couple making an initial inquiry, followed by a Caucasian couple making the same request). It was found that discrimination was practiced in all eight inquiries.

In one of the tests, the Committee discovered that only a single house, out of nine advertised for sale, was available to Negroes. Indeed, discriminatory practices appeared to be so common and so flagrant that many Committee members were amazed by their own findings.

To weed out charges that

might be rash or vindictive, the Committee interviewed only individuals who were either professional workers or University students at the graduate level; all had incomes commensurate with the cost of the housing desired.

Case histories told the story. Among the dozens of cases in the office of Community Welfare was a written statement from a young woman who described a series of episodes which she and three house-hunting friends had encountered in Berkeley.

They received a variety of negative responses to all their inquiries, she said, including a number of novel excuses.

One landlord told them: "I don't rent to Negroes or beatniks."

Another remarked: "I know a lot of Negroes—and they all told me they prefer to live with their own kind."

And a third explained: "I can't rent to Negroes because we have small children in this building."

"I have concluded, first," she told the Committee, "that discrimination is the rule—nondiscriminatory policies the exception; and, secondly, that there is practically no way of proving that you



are being discriminated against, short of tapping the phone or tape-recording your conversations. There is no doubt, however, that managers and landlords discriminate fearlessly and deliberately."

FURTHER testimony only confirmed the pattern. One couple told of looking at more than 60 apartments without success. Some were unavailable for reasons which could not be substantiated. But in at least 15 cases, the couple charged, discriminatory practices were unquestionable.

Both had attended college in New England and, they said, had had "no difficulty" finding suitable housing in Boston, Philadelphia or New York. But they expressed "surprise and shock" at the situation they encountered in Berkeley.

A similar complaint—of the kind that has campus officials particularly disturbed—was lodged by a married foreign student attending

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Continued From Page 3

the University, who encountered repeated difficulty trying to find an apartment in Berkeley. Several landlords assertedly told the couple flatly that they would not rent to Negroes under any circumstances.

"We were told we might have difficulty," the student commented. "But we never dreamed it would be this bad. We will not come back to Berkeley."

The Committee did not rely, however, solely on individual allegations. Independent, controlled tests were conducted by three organizations: The Encampment for Citizenship, the Committee on Racial Equality and the Japanese-American Citizens League.

On July 5, 1961, the Encampment for Citizenship followed up 37 apartment ads in the Berkeley Gazette to test for discrimination. Of these, 14 (or 33 per cent) were found to be practicing



discrimination. Four of those were within one block of the U.C. campus. And two of them were listed at the University Housing Office—which requires a pledge of non-restriction on the basis of race, color, or religion, before accepting a listing.

The testing procedure was standard. A non-white couple made an inquiry pursuant to the ad, followed within a few minutes by a white couple making the same inquiry. The result: the lead couples were rejected, while the follow-up couples were accepted, at addresses on Piedmont avenue, Addison street, Euclid avenue, Walnut street, College avenue, University avenue, and Ward, Haste and Prince streets.

Last February, the Japanese-American Citizens' League conducted an extensive, three-day telephone test, making 141 inquiries into housing advertised in the Berkeley Gazette. Of 117 residences advertised and still available, 94—or 80 per cent—were not open to Negroes.

Discriminatory housing practices in Berkeley have, of course, been a source of continuing interest, and embarrassment, to the University. Of the more than 2200 foreign students at U. C., approximately one-third are non-Caucasians. When the University made its non-discriminatory policy official in 1960, by insisting that landlords using its service sign

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a written promise not to restrict on racial grounds, it promptly lost 30 per cent of its listings.

WHAT sort of city is Berkeley? Nearly every resident insists that there is something indefinably special about Berkeley. It is a community of contrasts and clashing interests. It is one of the most cosmopolitan communities on earth—yet one of the most provincial.

As the seat of the largest university in the West, and one of the biggest in the world, it is a city dominated by its campus—and yet vaguely suspicious of it.

Viewed from the Bay, the whole city seems to radiate from the Campanile—a white shaft of granite thrusting 307 feet into the air—like ribs in

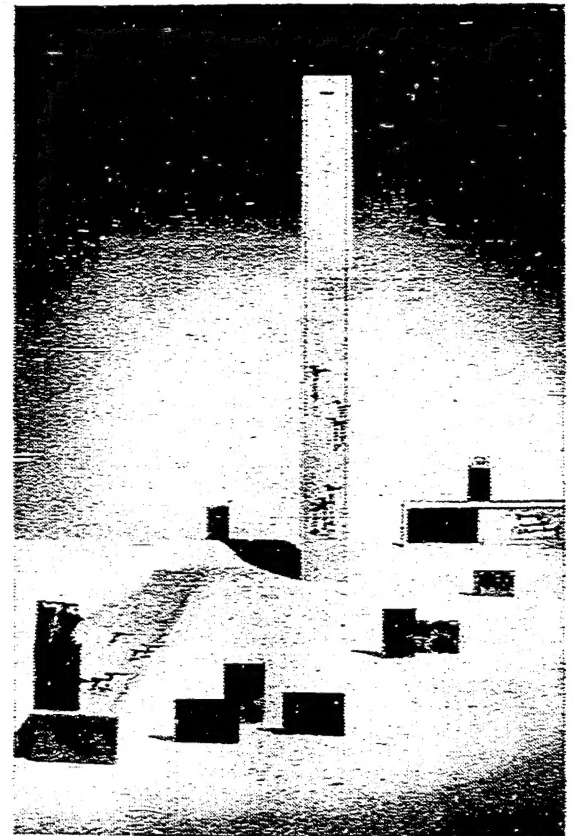
a huge fan. It is dependent on the University, which pumps a recession-proof payroll of \$70 million a year into the community.

But Berkeley is more than a college town: It is an industrial center, a business city, a suburban home for thousands of West Bay workers, a commuter town, a residential haven for the retired.

It is an intellectual city—housing 3300 university staff members and boasting more Nobel laureates than any other metropolis in America. Its very name is in memoriam to an Eighteenth Century poet and philosopher. And its streets were named for American men of science and letters: Dana, Ellsworth, Fulton, Allston, Bancroft, Channing, Dwight, Hawthorne, Lowell.

It is a city which takes its cultural diversity as a matter of course. With the university as an international hub for more than 2200 foreign students a year, turbaned Sikhs on Shattuck avenue or Tahitians on Telegraph are no more surprising than coeds in Bermuda shorts.

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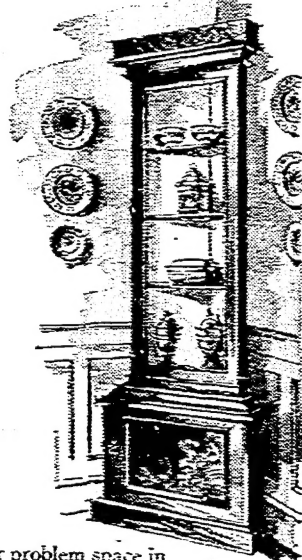


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Yet for all its sophistication, Berkeley is also a community whose civic life, until barely two years ago, was dominated by conservative downtown commercial interests—a fact of life so habitual and ingrained that it was simply taken for granted.

It is a city of some 35,000 homes—yet free of tracts—individual and distinct, one of the loveliest residential settings in all of California. From the gently sloping coastal plain, the houses and blooming gardens climb far up behind the campus, east to the steep hills and winding peaks that peer down on the sprawling, thickly settled flatlands.

But in the flats below, to the west of San Pablo avenue, Berkeley is an industrial town, a hub of light

industry abutting the waterfront—300 companies with an annual payroll of \$44 million.

And to the southwest, an area of old single dwellings and small apartments going to seed—what from above seems merely an amalgam of the coastal community, with all boundaries merged in imaginary lines—here are concentrated the city's 22,000 Negroes: This is Berkeley's Harlem.

PROFOUND changes have been taking place in the city of Berkeley ever since the beginning of World War II. But it was not until the 1960 census that the pattern could be pinpointed; that precisely what was happening—as if while the Bay Area's back was turned—became embarrassingly evident.

While the rest of the Bay Area was booming, Berkeley (like San Francisco) had experienced a small but significant decline in population since 1950. Although the city's population was slipping (from 113,805 to 111,263), the proportion of non-whites jumped from 15.4 per cent to 26.1 per cent.



Berkeley lost 2.2 per cent of its total population, but the white population fell 14.7 per cent. Negroes (who, prior to World War II and the impact of war industry on the West Coast, represented less than 5 per cent of the population) registered a gain of more than 64 per cent during the decade.

(Berkeley's Negro population is now approximately 20 per cent. Other percentages in major U.S. cities: Los Angeles and New York, 14 per cent; Dallas, 18 per cent; Houston and Chicago, 22 per cent; Philadelphia, 25 per cent; St. Louis, Cleveland and Detroit, 28 per cent; Baltimore, 34 per cent, and Washington, D.C.—the only city in the Nation with a Negro majority—54 per cent.)

What was significant, however, about Berkeley's population pattern, was not the mere increase in numbers and proportions of non-whites, but their distribution.

For census purposes, Berkeley is segmented into 28 tracts. Two-thirds of Berkeley's Negroes now live in five contiguous tracts in the extreme southwest sector of the city, which contains only 17 per cent of the total population.

One tract, for instance (bounded by Sacramento, Russell, Adeline and the southern city limits), is now 91.4 per cent Negro—up from 76 per cent in 1950. Another is now 87 per cent Negro, and so on.

Meanwhile this tight little island of segregated housing, having reached saturation levels in the city's extreme southwest, is gradually expanding north and east.

And there is an intriguing phenomenon occurring in the city: The establishment of racial "buffer zones," dividing the predominantly Negro west from the white east—a sort of intra-city Gaza strip which is slowly being settled by other non-whites (Indian,

Chinese, Japanese and Filipino).

For example, of the half-dozen mid-city census tracts that are now more than 5 per cent non-white (running roughly east of Sacramento, west of College, south of Cedar and north of Dwight), other non-whites now outnumber Negroes by as much as 33 to 1 in one tract—despite the fact that there are 21,350 Negroes in Berkeley compared to 7337 other non-Caucasians.

The five tracts with the highest concentration of whites are all in the eastern portion of the city—and none of them has a Negro population amounting to as much as 1 per cent of the total. In fact, the average Negro population percentage in the east Berkeley area is three-tenths of 1 per cent.

It is also the only section of the city where the Negro population actually declined in the last decade (by 20.9 per cent) at a time when it was rising in the rest of the city by more than 64 per cent.

Thus, one conclusion seems inescapable: Berkeley already has its own Mason-

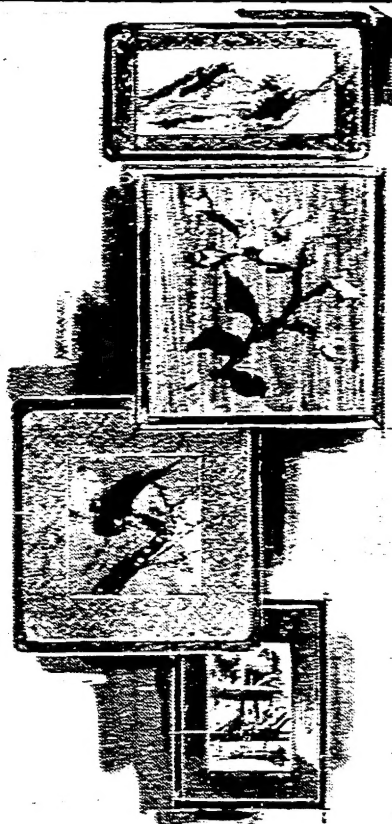
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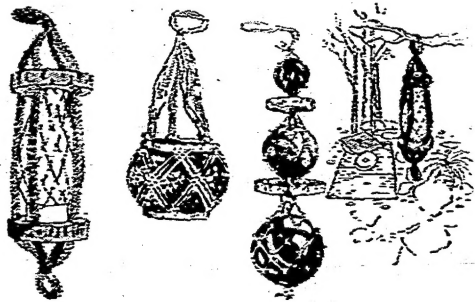
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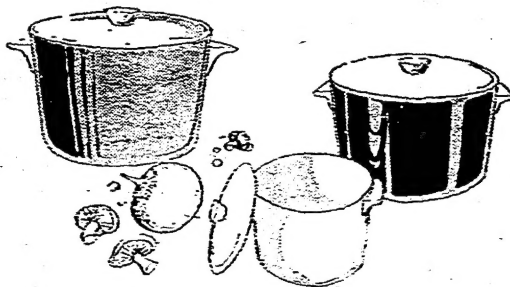
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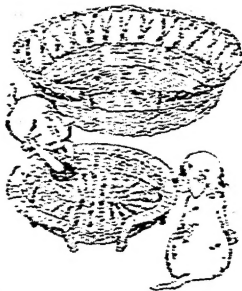
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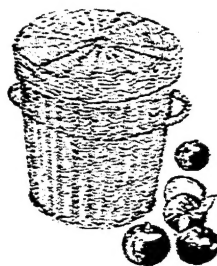
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Dixon line—except that it runs north and south (along Shattuck avenue) and divides white east from black west.

"It has been community-wide knowledge," reports the Berkeley chapter of the NAACP, "that 99 per cent of the Negroes living in the hill area purchased their homes either through a front buyer, or bought directly from the owner."

"The mere fact that some Negroes live in these predominantly Caucasian neighborhoods does not suggest that they can make such purchases on the open market and through real estate brokers. It only substantiates the fact that it is impossible—or nearly—for a Negro home buyer to make purchases through offices of real estate brokers."

To "gain an insight into the functioning of the real estate market in Berkeley," the Citizens Committee also talked to realtors. Fifteen brokers were interviewed, ten picked at random from the telephone book, and five selected from among influential firms on the powerful, 500-member Berkeley Realty Board.

THE real estate men were confronted with four prickly questions:

- Are opportunities in Berkeley for qualified minority buyers equal?
- Would you make, or have you made, a "first entry" sale? (A non-white buyer in an all-white neighborhood.)
- Do property values decline when a minority family moves in?
- What solutions would you propose for dealing with housing discrimination in Berkeley—if you concede the problem exists?

All the brokers answered the first question with a flat "No," but they insisted that they do not intervene either way, to encourage or discour-

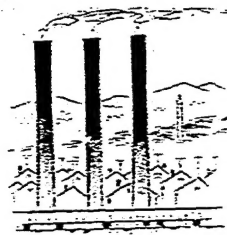
age sales to minorities, although some admit to actively "protecting" all-white areas from minority encroachment.

All of them put the brunt of the blame on house and apartment owners who refuse to sell or rent to minorities either because of personal prejudice, or because they assume prejudices on the part of their neighbors.

On the touchy question of "first entry" sales, many Berkeley brokers had not, and would not, make first entries because "it would ruin my business."

Do property values decline when Negroes move in? Although their clients believed they did, most of the brokers themselves firmly believed they do not. According to Ned Robinson, the attorney for the Berkeley Realty Board: "The belief that property values depreciate when Negroes move in is simply a myth."

What do Berkeley's brokers themselves recommend? Gradualism. They insist that the Board itself has been con-



siderably liberalized in recent years, with the admission of minority members, and that this has resulted in a lessening of the problem.

"Education" is their favorite solution—although the Committee notes that their definitions are "somewhat vague."

In general, Berkeley's realtors seem to take a rosier view of the housing situation, and their role in it, than seems warranted by the evidence. Jay Force, the earnest, hard-working president of the Board, insists that discrimination in Berkeley is exaggerated. "If a Negro were really determined to move into a neighborhood," says Force, "he could; I doubt that you can find two straight blocks in Berkeley where there are no non-Caucasians."

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Force insists that the Board does not condone discrimination, indeed condemns it. He maintains that the brokers' hands are tied; that they are already bound by existing law to present all offers to the seller.

Since no broker can legally refuse to sell a piece of property to a Negro (although the owners, at present, can), Force argues that whatever discrimination exists is not generated by the brokers—although they often get most of the blame.

In theory, Force is right. To a man, the brokers are aware of California's existing Civil Code prohibiting discrimination in business enterprises (the "Unruh Act"). But there is a very wide variance in their understanding of the law, and their observance of it.

One real estate woman, for example, working the politically conservative Thousand Oaks area, told a Committee interviewer in highly emotional terms that she would "never sell to a Negro, under any circumstances. The day I have to sell to a Negro," she said, "and ruin this fine district, I'll close up and get out of the real estate business."

Pressure from realtors — although not the primary source of the problem — is not an unknown practice either, as is amply illustrated

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in the Citizens Committee's records.

One woman living in an all-white neighborhood complained that a realtor who happened to be a neighbor had tried to persuade her not to sell to a Negro doctor, and had told her that he would "take care of everything."

Under pressure from the broker and her neighbors, she told the investigators, she was finally forced to take the listing off the market. And she stressed one key point to the Committee: She had not insisted that the house be sold to a non-white family; but "as a good Christian," she could not "accept the discrimination of the real estate firm" she'd been dealing with. And she "resented the realtor's attempt at impeding my right to sell to whom I wish."

Jay Force himself recently became the target of a pressure campaign, for having honored the letter of the law.

He had placed a house on multiple listing, then presented an offer from a Ne-

gro which was brought in by a minority member of the Board—a contract which, as Force has explained, he was legally bound to present, and which the owner accepted.

Force promptly became the object of a devious campaign in which anonymous cards — bearing Martinez postmarks—were sent to all brokers on the West Contra Costa Realty Board, and to Force's colleagues on the Berkeley Board. The cards merely said:

"The property at 5919 Charles Avenue, El Cerrito, was sold to Negroes in an all-white neighborhood by:
Jay Force, Realtor
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Berkeley, California

"Its purpose was pretty obvious," says Force. "I guess I was supposed to be drummed out of the community like some kind of leper."

In the ensuing weeks, he became the victim of anonymous crank phone calls.

BASED on its interviews with the brokers, the Committee concluded that there was a tendency to pass the discriminatory buck.

The course of the investigation revealed that individuals in every facet of the housing market were concerned, but each believed that pressures beyond his control forced him to go along with the established pattern.

Thus, the apartment seller feared reaction from his tenants, the homeowner feared reaction from his neighbors, the broker feared for his business and felt constrained to accede to the seller's wishes.

And it all added up to a conspiracy to conform.

In a summary of the Committee's conclusions, one member observed:

"The context of pressures within which the realtor must operate — the seller's wishes, the civil code prohib-



ing discrimination, pressures from the organized association of brokers, and public opinion — all restrict the area of freedom which the individual realtor has.

"By himself the individual cannot effectively tackle this institution of segregation. It requires group action on the part of the realtors themselves . . . and on the part of the community as a whole — through the City Council — which can set the standards by which we all operate."

The Berkeley City Council

was soon to be given just that choice.

In the course of its investigation, the Citizens Committee reviewed existing State legislation in the field, and found it severely wanting.

Two laws are currently on the California books, Sections 35700-41 of the Health and Safety Code (the "Hawkins Act"), which forbids discriminatory practices in certain publicly-assisted housing (five or more contiguous units financed with FHA aid) and sections 51 and 52 of the Civil Code (the "Unruh Act"), dealing with discrimination in business. Both provide an award of civil damages to aggrieved parties.

But while these laws apparently apply to brokers, they do not apply to owners (except in the case of apartment houses).

Moreover, even when the law applies, it requires persons claiming discrimination to go through the process of hiring an attorney and going to court to seek civil damages—when it is not damages the plaintiff presumably wants, but adequate housing.

Not until March 26, 1962, did the California Supreme Court uphold the constitutionality of the Unruh Civil Rights Act, adopted in 1959.

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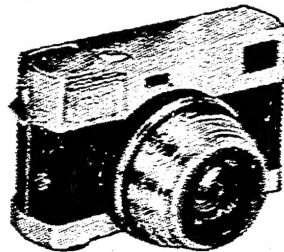
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The Berkeley Story

Continued From Page 7

(Prohibition of discrimination "in all business establishments" was ruled applicable to real estate brokers and salesmen.)

This action of the high court, in effect, gave California similar coverage to that provided in Oregon. However, unlike Oregon, which specifically forbids real estate salesmen from participating in any discriminatory transaction — (and empowers the State Real Estate Commissioner to revoke the license of any broker who violates the State Housing Act) — California has no machinery for enforcement.

Unlike Alaska, New Hampshire, Colorado, Connecticut, Massachusetts, Minnesota, New Jersey, Oregon and Pennsylvania, California has no laws covering discriminatory practices in private housing or mortgage lending. Nor, unlike the others, does it have an official enforcement agency.

In the Berkeley Citizens Committee's view, however, the main drawback was this:

"For nearly all persons engaged in real estate transactions, the present California law makes available, or threatens, a potential suit for damages should there be any alleged discriminatory practices. This could lead to less discrimination in housing, but may lead also to costly civil law suits, time-consuming court appearances, and placing the solution of a community's discrimination problems on an adversary basis, thus breeding hostilities and increasing friction

BY THE END of its exhaustive, nine-month probe, the Committee had compiled enough data to draw the following conclusion:

"Discrimination in housing within the city of Berkeley is widespread and general, in both rental and sale of housing."

Finding that the accumulated results of discrimination were "of such magnitude as to warrant immediate community action," the Committee made the following recommendation to the City Council:

Create a professionally-staffed "Commission on Intergroup Relations," empowered to investigate complaints and initiate investigations; conciliate disputes; and conduct public hearings when conciliatory processes fail.

But the Committee also

prescribed some stronger medicine, recommending that the City Council:

"Make it unlawful to discriminate on the basis of race, color, creed or national origin, in the sale, or rental, or transfer for value of a housing unit to another person."

The Committee further advised that violation of the provisions of the ordinance carry the following penalties:

- A right to civil damages.
- Failing all attempts at conciliation, certification of the case to the City Attorney's office, which would provide counsel to the aggrieved.
- A fine, or county jail sentence, or both, upon conviction.

On the first two provisions, the Committee's margin of agreement was wide (the votes were 13-2 and 11-4, respectively). However, on the question of penal provisions, the members were sharply split (8-7).

The opposition (minority) argued that a public hearing, or the threat of one, was the most potent deterrent to discriminatory practices; that penalties of civil damages, jail sentences and fines were



too drastic, and would arouse opposition to the real aims of the ordinance.

The proponents (majority) contended that because court action would be invoked only as a last resort, after an individual was found to have violated the ordinance by three separate reviews of the facts, and to have refused conciliation by the Commission, it seemed only reasonable that the City's ordinance be enforced — by the same penalties as are invoked for the violation of traffic laws, anti-litter laws (throwing a gum wrapper on the sidewalk is also a misdemeanor in Berkeley) or any other statutes.

In short, they argued, a law with no provision for enforcement is no law at all.

The Community Welfare Commission—a nine-member agency with solid conservative representation — was even more emphatic than the Citizens Committee. The Commission was unanimous in its opinion that an award of civil damages was not "a proper remedy" for violation. It recommended that violation of any of the provisions of the proposed ordinance be regarded as a misdemeanor, thus leaving offenders wide open to possible fines or imprisonment.

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Continued From Page 8

Without comment, the City Council received the report and recommendations from the Welfare Commission, and set a public hearing for November 27. It was to be one of the most significant hearings in Berkeley's history.

To accommodate the crowd of Berkeley citizens who wished to attend, the regular meeting of the Council had to be moved from the City Hall to the Berkeley Little Theater.

Six hundred people showed up. Another hundred had to be turned away. And seldom, in any American community, had the voice of the people been so eloquent—or heard at such length.

During the course of the marathon meeting, 47 persons addressed the Council in favor of the Community Welfare Commission's recommendations. Some 50 religious, fraternal and civic organizations either wired their approval or sent representatives.

A parade of churchmen appeared in support of the ordinance from the Good Shepherd Episcopal Church, the East Bay Board of Rabbis, the McGee Baptist Church, the Catholic Diocese of Oakland, the Protestant

Ministry to Foreign Students, the Berkeley Society of Friends, the Berkeley Fellowship of Unitarians, and the Berkeley-Albany Council of Churches, among others. Only six Berkeleyans appeared at the first public hearing to speak in opposition to the proposed ordinance, but they drove home their points in a five-pronged argument:

- One of the greatest of individual freedoms is the ownership and disposal of private property: it must not be tampered with.

- Passage of an ordinance as recommended by the Welfare Commission would discriminate against property owners; in an attempt to end discrimination against one group, it would impose it on another.

- Such an ordinance would tend to antagonize people, and therefore accentuate the very evils it proposed to eliminate.

- The State of California, through the Unruh Act, had already pre-empted the field; therefore, the proposed ordinance was neither necessary nor advisable.

- The will of the people of Berkeley had already been expressed, in 1959, by their defeat of Proposition C—an ordinance relating to discrimination and segregation in multiple dwellings.

Spearheading the opposition to the ordinance was a pair of organizations—the Apartment House Association of Alameda County, and Berkeley Citizens United. The latter is a non-political watchdog group

which, in its self-proclaimed capacity as a guardian of "integrity, efficiency and economy" in the appropriation of tax funds in Berkeley, is best known for its vigorous opposition in the past to Berkeley's school bond drives.

Otis ("Otey") Marston, the spry, 69-year-old scion of one of Berkeley's founding families, is the president of Berkeley Citizens United; he is also one of the more colorful characters in a city where characters abound.

By his own definition, he is a conservative but lively "old fossil" of the species who have inhabited Berkeley for 40 years or more, and who constitute a significant segment of the community.

A cheerful, chatty little man who sports a white Vandyke and has a weakness for black batiste shirts and white tennis shoes, Marston is a one-time engineer and erstwhile investment counselor at E. F. Hutton & Co., the San Francisco brokerage house "where I worked for 11 years," he says, "before I finally got fired."

An ultra-conservative who makes no bones about it, he professes an abiding suspicion of the John Birch So-

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ciety ("undemocratic"). He also says he's a good friend of Barry Goldwater — with one reservation.

"The only trouble with Barry," Marston chuckles, "is that he's too far left."

"Democracy depends upon the will of an informed electorate," says Marston. "People are all worked up about this. I'm amazed at the number of calls I've gotten:

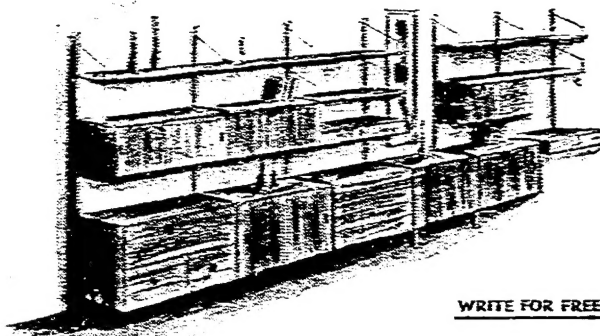
90 per cent against the ordinance."

Why is he so personally worked up against it? "To tell you the truth," says Marston, "I haven't read the ordinance. Haven't had the time. But my impression is that I don't trust all these commissions. They're restrictive. After all, I'm the only reasonable man I know —

See Page 10

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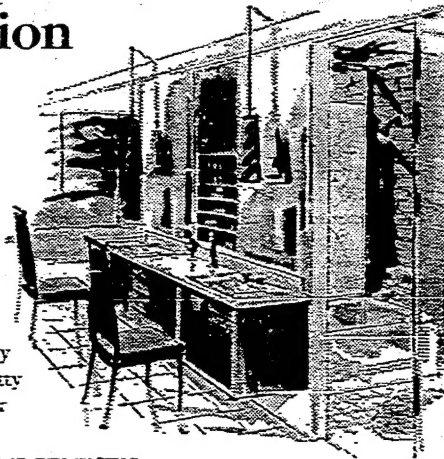
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The Berkeley Story

Continued From Page 9

and I'm too busy to serve on a bunch of commissions."

Actually, Marston believes the whole thing is a fuss over feathers, which should never have been stirred up in the first place. "Education," he argues, "is the only solution to segregation: If left alone, time would solve the problem."

"The liberals are not going to accomplish what they intended to accomplish," he says. "They are going to encounter problems they didn't anticipate. The ordinance has aroused tension and race hatred. There'll be violence between the races before this thing is through."

"It's too bad, because the whole thing was unnecessary. If they'd just let them alone, they'd merge by themselves. You know, it's an historical fact that when two races live together for 500 years they merge."

ADVOCATES of a strong anti-discrimination ordinance for Berkeley insisted at the public hearings that their opponents were harping on technicalities, while ducking the fundamental issues in a free society.

That discrimination is a moral problem which cannot be ignored, particularly in a leading academic community; that it is hypocritical to condemn segregation in the South, while condoning it in the North; that discrimination is a basic contradiction of democratic principles, and makes a mockery of American pretensions to world moral leadership; that de facto segregation is humiliating to the individual and harmful to the community; and that failure to enact such an ordinance would constitute a cardinal sin—placing property rights above human rights.

To an outside observer, what was most impressive about the volume and passion of the response was its gauge of the caliber of a community. The Council received 117 letters and wires—from 89 individuals and 28 organizations—before the first public hearing.

What came through most of the messages was an almost missionary zeal, a civic spirit and a fierce pride in Berkeley—the feeling that whether or not Berkeley's problem was worse than other cities' was irrelevant. As a unique community, Berkeley must lead the way.

Many messages reflected a range of alarm, tension and anxiety over the future of

Berkeley—unless some courageous legislation were passed promptly.

One letter pleaded with the Council to "prevent the racists in Berkeley from turning our calm city into a hotbed of racial violence." Otherwise, the writer foresaw a "Mississippi right here in Berkeley."

Others warned that, without legislation, Berkeley was creating a monster in its midst—an angry Negro community, and a potentially "frustrated, rebellious, explosive force."

On the other hand, many of the ordinance's opponents feared it as a totalitarian attack on personal liberty.

"Are you regressing to the dread days of the New England witch hunts?" Harold Grismore of 1210 Milvia street asked the City Council in all earnestness. "To the infamous times of the Spanish Inquisition, to the dark ages...? (This ordinance) is another attempt by law to bring everyone to a common level. Too many of these have succeeded in recent years, and the moral fiber of the country is suf-



fering as a consequence—it is another step towards socialism...

Both sides called upon "morality" and the mandate of personal freedom to justify their views. Each side predicted dire consequences if the legislation was, or was not, passed. And both sides called up the spectre of communism to support their arguments.

"I feel this ordinance is a very dangerous measure," warned Mrs. Lola Stewart of 1863 San Antonio avenue, "and one implanted in the minds of people by the Communist element, who hope to make gains for themselves at the expense of every Berkeley home owner.... This is the United States—not Russia—and to start passing ordinances of such format will only make trouble for everyone. The Rights of Individuals are at stake."

The Reverend Francis Marion Smith also cited communism for his counter-argument.

"We need to remind ourselves," Smith told the Council, "that what we do here today is observed in a world frame of reference by underprivileged, independent, and non-Communist peoples of the world, choosing for their future between communism and democracy."

"Khrushchev says he will bury us, but it is even more possible for us to dig our

See Page 12

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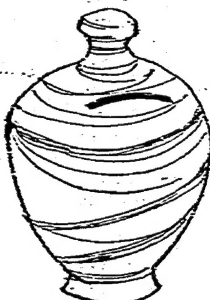
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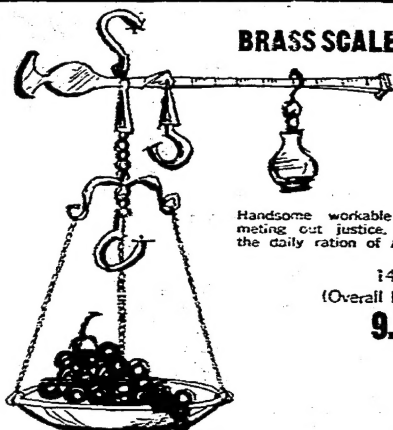
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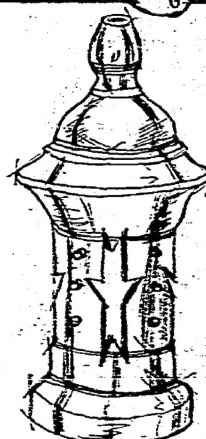
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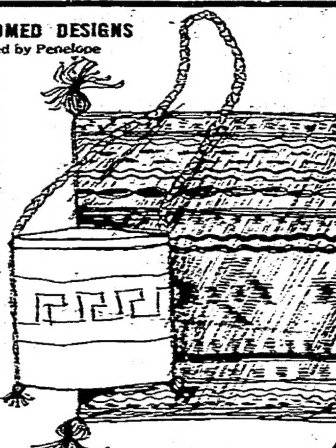
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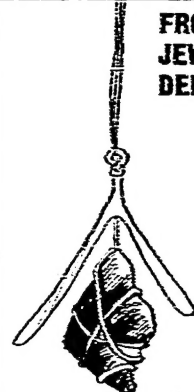
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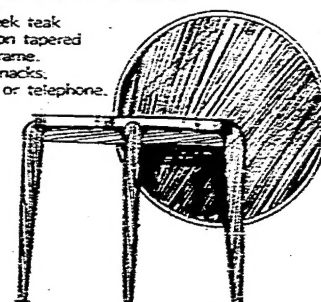
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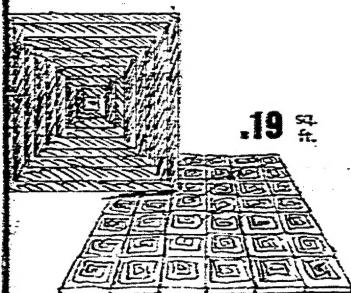
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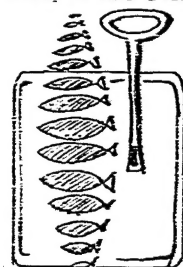
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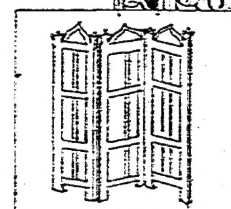


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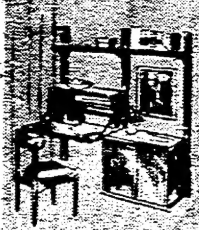
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Continued From Page 10

own graves, if we flout the principles of democracy and deny equal rights of housing because of color, race or creed."

But of all the letters the Berkeley City Council was to receive on the issue—about 200 of them before they were through—perhaps the most poignant came from an Oakland school teacher.

"I am a white resident in an area of Berkeley which is almost totally white in population," she began. "I teach 5th grade American History in an all-Negro junior high school in Oakland. Daily I face questions from my students on why their school is segregated (de facto), why they can't live, go to school, work, etc., where they please.

"You can imagine my struggles to explain this—along with the Bill of Rights and the American commitment to the worth of the individual! I sometimes have trouble convincing them they wouldn't be better off under another system of Government."

"I know my students would be better citizens if they were growing up in the atmosphere we profess to promise ALL Americans . . .

"I am not appealing to you on the grounds of the way we look to the world—only on MORAL grounds. We must stop this senseless, immoral behavior—and soon!"

Signed
Joan M. Rose
2527 Dwight Way
Berkeley, Calif.

Caught in the crossfire between pro and anti-ordinance forces, Ned Robinson, spokesman and lawyer for the Berkeley Realty Board, surprised many by putting the board unequivocally on record as "unanimously approving" the Citizens Committee report which had urged the council to make discrimination in housing in Berkeley illegal.

"The board recognizes that there is discrimination," Robinson told the council, "and it also recognizes the need



to abolish it." The board of directors, he said, had unanimously recommended support of whatever legislation was necessary to effect this goal. And he urged "immediate enactment" of the first portion of the proposed ordinance, establishing a commission with full investigatory and conciliatory powers.

However, Robinson also recommended that the penalty clause not be enacted "at this time." "Penal provisions," he argued, "tend to defeat what we are trying to accomplish. They create hostility and increase friction. If this suggestion does not work, it is very easy for the council to enact penal provisions later."

AT 11:20 p.m. on Dec. 4—after another long public hearing in which 42 more citizens spoke on the issue—Councilman William T. (Zack) Brown moved that Berkeley's public hearings on housing discrimination finally be closed, and that

The Berkeley Story

the City Council come to a decision.

In the maneuvering that followed, the "fair housing" proponents on the council grew increasingly impatient, and suspicious of a deliberate stall. Councilmen Brown, Arthur Harris, T. Jack Kent, Wilmont Sweeney and Mrs. Bernice Hubbard May, all commented repeatedly that the council had had plenty of time to study the recommendations of the Citizens Committee, and that the matter consisted of three basic, easily assimilable points.

(1) The fundamental decision—whether the council approved and accepted, in principle, the recommendations of the Citizens Committee—exclusive of the request for sanctions.

(2) The recommendations with respect to sanctions.

(3) A specific ordinance which would implement the principles adopted.

But the proponents were in for a big surprise. It was impossible for them to get unanimity on any of the three primary points.

When Harris moved that the council consider them one by one, and a roll call was taken on the first—(approval in principle of the Citizens Committee's recommendations)—Mayor Claude Hutchison and three councilmen (Arthur Beckley, John DeBonis and Mrs. Lee Breckinridge Thomas) voted "No."

"In effect," Harris later complained bitterly, "This meant they were repudiating the committee we ourselves had appointed, and whose efforts we all assumed they had supported all those months."

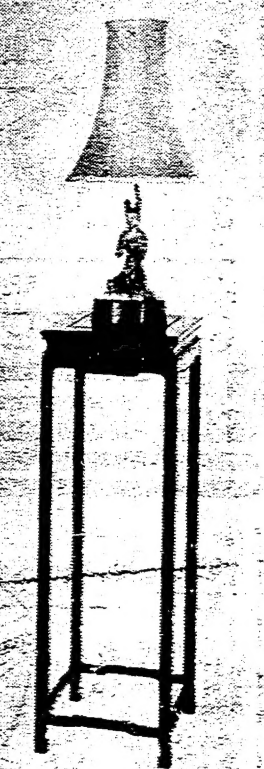
It was not until January 16—three months after the Council had first received the Committee's report—that a showdown vote finally was taken on the ordinance. When it came, the Mayor and DeBonis voted against the measure. Beckley and Mrs. Thomas were absent. Brown, Sweeney, Kent, Harris and Mrs. May voted for.

The final tally: 5-to-2 for an ordinance:

PROHIBITING DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN OR ANCESTRY IN THE SALE, RENTAL, LEASE OR OTHER TRANSFER OF HOUSING ACCOMMODATIONS; PROVIDING FOR INVESTIGATION, CONCILIATION AND PUBLIC HEARING OF COMPLAINTS OF HOUSING DISCRIMINATION.

See Page 13

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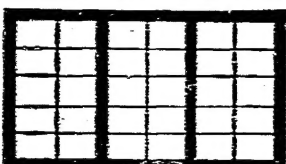
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The Berkeley Story

Continued From Page 12

TION: AND PROVIDING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREOF.

This is how the law would work:

A four-member Board of Intergroup Relations, selected from an expanded Community Welfare Commission, would be empowered to investigate all charges of housing discrimination. The first step in any discrimination hearing would be the filing of a complaint, and investigation by a board member. If the investigator confirmed the charge, he would attempt to eliminate the violation privately—by means of conciliation and persuasion.

If conciliation failed, a public hearing would be held—with the respondent having the right to file an answer, appear in person or be represented by an attorney, examine and cross-examine witnesses.

If upon all the evidence presented, a majority of the Board members found that there had been a violation, it would issue a desist order. (This is similar to the procedure followed by the State's Fair Employment Practices Commission.)

The violator would have 30 days in which to comply with the order. If he failed to comply, then—as a last resort—the case would be turned over to the Alameda District Attorney, or to the City Attorney's office, for prosecution as a misdemeanor.

The maximum penalty, upon conviction in Berkeley-Albany Municipal Court: six months' imprisonment, a \$500 fine, or both.

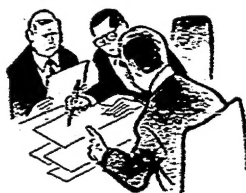
What was unique about Berkeley's new ordinance was that it applied not merely to real estate dealers and home-financing agencies, but to individual home owners. The only exemptions were: (1) homes in which just one room was rented; (2) duplexes where the owner also resided; and (3) living accom-

modations owned by non-profit religious and fraternal institutions.

Furthermore, the ordinance would be extremely difficult to circumvent: It made it illegal to differentiate in sale or rental price according to race. And it made it illegal for the owner of any housing accommodation, or any "person, bank, mortgage company, or other financial institution" even to inquire—either orally or in writing—as to the race, color or religion of a prospective buyer, renter or loan applicant.

For the protection of the landlord, a provision was insisted upon by Wilmont Sweeney (the lone Negro on the Berkeley City Council). It would require the complainant to sign a "written waiver of any and all rights or claims that he may have under the Unruh Civil Rights Act and the Hawkins Act."

Thus, the complainant would have redress either under the new ordinance or through established civil procedure—but not both. The aim was to make it impossible for statements made at



private or public hearings to be used against the accused in subsequent court proceedings.

This provision (together with all the conciliatory steps, during which a complaint could be substantiated or dismissed before it ever reached court) was designed to protect the landlord from "nuisance suits"—a protection he does not now have under existing State law.

Enactment of this ordinance would make Berkeley the first city in California to approve such a law. It would be only the second city in the Nation (with Pittsburgh) and the first in the West to have made housing discrimination a crime—punishable, if necessary by a jail sentence.

THE FIRST local legislation in the private housing field in the U.S.—the pic-

See Page 14

Fantasia

Last week history was enriched by these off-beat adventures:

• Shortly before they were scheduled for guard duty at Windsor Castle, 25 members of Britain's crack Scots Guards went AWOL—in a huff brought on by "poor grub and all the heckling" and a Sergeant Major who had been "too tough."

• Parents of 6-year-old George Basle of Washington, D. C., thought it was cute he had learned how to dial the

weather bureau for the latest forecasts—until they got a bill for \$22, and learned young George was calling the bureau in New York.

• Identical 22-year-old twins Elaine and Lorraine Yamber of Brunswick, Me., were recuperating in the hospital after each broke the same bone in the same leg (left) in ski accidents a few days apart.

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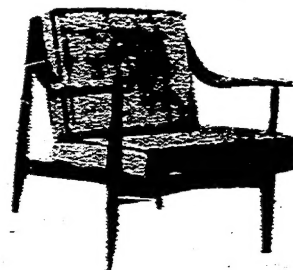
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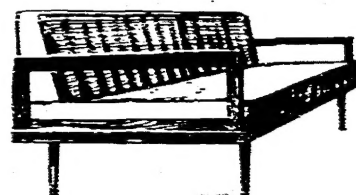
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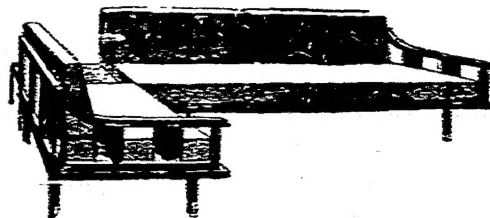
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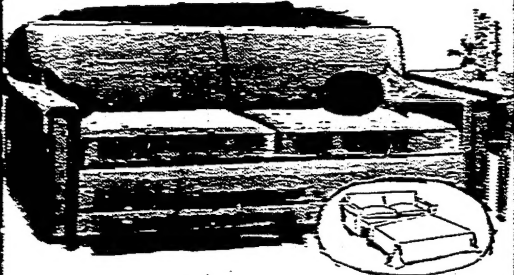
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Continued From Page 13

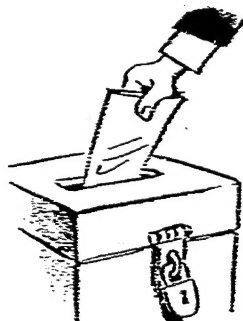
neering Sharkey-Brown-Isaacs bill—is now five years old. It was passed in New York City on April 1, 1958. In quick succession, similar measures became law in Colorado (April 10, 1959); Pittsburgh, Pa. (June 1, 1959); Massachusetts (July 21, 1959); Oregon (August 5, 1959); and Connecticut (Oct. 1, 1959).

By the beginning of the year, 49 U.S. cities had laws or resolutions affecting discrimination in housing. Only two cities, however, and 10 states had active laws barring discrimination in private housing.

Last April, the State of Alaska enacted the most all-inclusive anti-bias housing law anywhere in the Nation. Outlawing discrimination in "public housing, all forms of publicly-assisted housing, and any housing accommodations offered for sale, rent, or lease," the Alaska law made violators liable to 30 days imprisonment, a fine of up to \$500, or both.

How have the laws worked? Though it is still too early to deliver a final verdict, they appear thus far to be working remarkably well. Very few cases have ever gone to court; the vast majority have been settled by conciliation.

The executive director of Pittsburgh's Commission on Human Relations, Louis Mason, tells The Chronicle that of the 96 cases that have



been heard in that city since its ordinance took effect on July 1, 1959, only two have ever reached the public hearing stage and gone to court.

"Since the enactment of the law," Mason adds, "over 100 non-white families have moved peacefully and without incident into neighborhoods heretofore closed to them."

For all of Pennsylvania, where the state fair housing law provides fines of \$100 to \$500, and up to 30 days imprisonment. Human Relations Commissioner Elliott Shirk reports: "The overwhelming majority of 122 cases in the first year were settled short of a public hearing or formal order. No penalties have been invoked."

In New York, in five years, only 12 out of a total of 1516 cases were referred to corporation counsel for prosecution in the State Supreme Court. Madison Jones, execu-

The Berkeley Story

tive director of New York City's Commission on Human Rights, reports that the calamitous effects predicted by opponents of the legislation (including The Times, which originally opposed and now supports the ordinance) simply did not develop.

"The dire predictions," says Jones, "of white tenants moving out when Negroes move in, a sharp drop in the construction of rental housing or home construction, and the devaluation of property, failed to materialize." In fact, the Commissioner reports increases in construction in every year since the enactment of the city's Fair Housing Practices Law.

The most impressive record, however, and one of the most overlooked, according to Frank Quinn, the Executive Director of San Francisco's Council for Civic Unity, exists in "our own back yard."

California's Fair Employment Practices Law (which served as a model for Berkeley's ordinance) also carries a misdemeanor penalty (a fact which is not generally known, and about which there has been virtually no public clamor).

Yet of the 2136 complaints filed since 1959, only three cases have ever reached a public hearing. And no fine or misdemeanor penalty has ever been invoked.

The constitutionality of local statutes has already been challenged and upheld in New York and Colorado. In New York the first Fair Housing Practices Law was upheld as constitutional in April, 1960—after a Greenwich Village real estate man had challenged the law on grounds that it interfered with his right to conduct his business.

If the Berkeley ordinance survived a routine second reading, it had been scheduled to go into effect on February 21. It survived the second reading, all right, but it did not go into effect last month. In fact, there is some doubt that it will go into effect at all.

Minutes after the ordinance was approved, it was challenged. Otis Marston promptly announced that his Citizens United would circulate petitions to put a referendum on the April 2 ballot. "Refusal of the Council to submit this important measure to the voters," said Marston, had forced his hand. "This dictatorial act leaves no other course than to force the newly adopted law on the ballot

See Page 15



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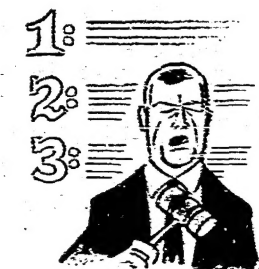
Haven't you heard about White's unfinished? SAN ANSELMO WALNUT CREEK

The Chronicle has the
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Continued From Page 14
through a referendum petition . . .

Marston, who needed 3363 signatures (ten per cent of the number of votes cast for Mayor in the last municipal election) to get the issue on the ballot, promised to bring in "more than 5000."

Last month, on the final day of eligibility, Marston asked for a police escort and got it, then bundled his petitions down to City Hall. Citizens United had collected not 5000 but 10,555 signatures—nearly three times as many as needed.



The petition left the Council with only two choices—and by the Berkeley charter it had to accept one of them. The first was to repeal the ordinance. The second was to put it on the April 2 ballot, which, of course, the Council did.

Meantime, the fair housing ordinance would be inoperative until the election decided its fate on April 2, in a

referendum that was the first to be put before Berkeley's voters since 1929 (when the people cast ballots on a proposal concerning the prohibition of certain kinds of shingle roofs).

In the heat of the controversy, there is perhaps a tendency to exaggerate and overstate the case in both directions. It is not true, as has been charged, that this was the hasty decision of a bunch of "wild-eyed radicals" who railroaded the legislation through, in utter disregard of the will of the community.

The five Council members who supported the ordinance were two prominent attorneys, a member of the University of California's City Planning Department (and former San Francisco planning director), the manager of one of the largest credit unions in California, and a past State president of the League of Women Voters.

On the other hand, not all its opponents are narrow-minded, Babbitt-like bigots.

Many argue with conviction that the law poses a conflict between individual liberties. It pits the "right" to live, rent or buy where one desires, against the right to control the use of property privately owned as one wishes. They argue further that compulsion is a dubious substitute for education and the spread of compassion and good-will that can be

The Berkeley Story

the only sound foundation for genuine integration.

The East Bay Friends Committee on Legislation, which is unequivocally for the ordinance and is lobbying on its behalf, has itself expressed reservations over the penal provisions.

"The sharply divided vote of the Committee on the question of a fine or jail sentence," observed the chairman of the organization's steering committee, "reflects our own uneasiness in this area. We believe penalties for damages and fines are adequate. Experience with similar laws in other cities has shown that when these penalties are available they are seldom used."

"However," adds Mrs. Russell Jorgensen, "although we're not sure whether or not it was necessary to include the penalties, it is certain that the conciliation aspects of the law have been vastly underrated. The opponents tend to whip up emotions by emphasizing the misdemeanor aspects—which will seldom be a factor."

Opponents contend the law is 1) unnecessary, 2) unconstitutional, 3) that the State has already pre-empted the field, and 4) that the decision should have been left to the people—not forced upon them by the Council.

Few will say it out loud, but many admit in private, that they fear the Negro as a neighbor. And they cite statistics: That of the nearly 4000 major crimes committed in Berkeley last year, for instance, about 52 per cent were committed by Negroes, who represent 20 per cent of the population.

To these, the proponents have many answers. They argue that laws always arbitrate between conflicting rights; that a civilized society must choose between contradictory interests and opposing freedoms, and must decide which to sacrifice; that it must rule between property values and moral values; and that the latter must take precedence over the former.

They contend that the overwhelming preponderance of evidence indicates that legislation is necessary. As to the debate over constitutionality, they insist that the only way to test a law's legality is to put it on the books; it is not the legality of legislation that the public should question but its justice.

ON THE LAW of pre-emption, while the City Attorneys of both Berkeley and San Francisco advise that the State has pre-empted the field, and municipalities therefore do not have jurisdiction, the proponents point out that State Attorney General Stanley Mosk has already ruled that the State has not pre-empted the field.

As for the contention that the council should have put the measure to a popular



vote, instead of making the decision itself, the ordinance's supporters are emphatic:

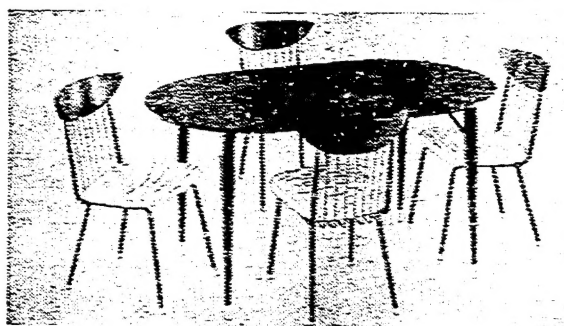
"Under our republican form of government," observes Councilwoman Bernice May, "laws are passed by elected representatives. If they declined to make a decision every time the legislation was significant or controversial, they would be forfeiting their obligations and shirking their responsibilities."

See Page 16

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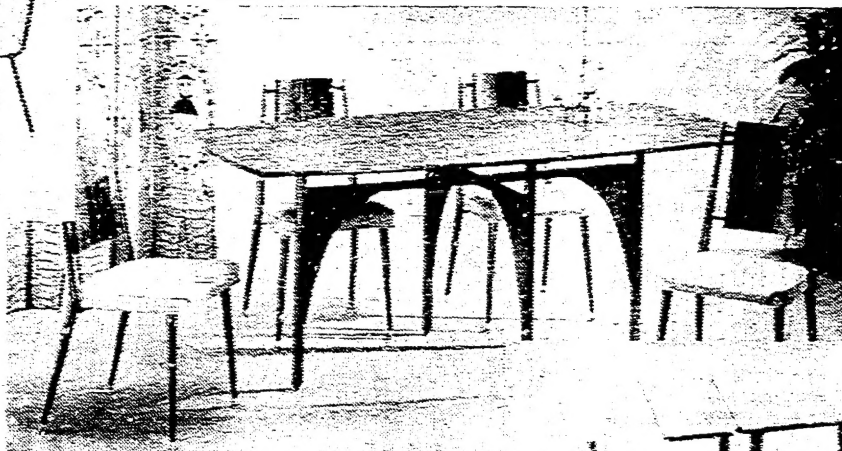
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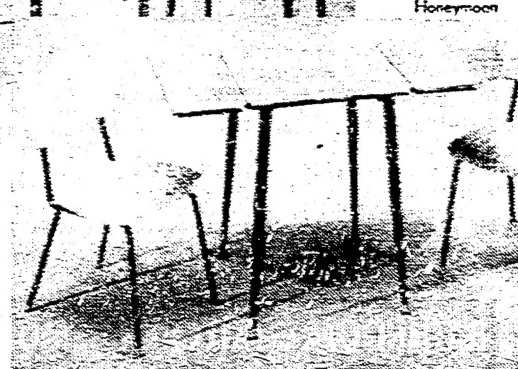
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Honeymoon

BUDGET
TERMS

Continued From Page 15

Sponsors of the ordinance maintain that putting it on the ballot serves mainly to fan emotionalism and reduce complex issues to campaign slogans.

Finally, regarding the Negro and his relation to crime, Berkeley's Police Chief A. H. Fording recently observed: "The Negro has been discriminated against in housing, education, employment, job training and civil rights. These factors are all part of the Negro crime pattern."

"While it is true that there has been a disproportionate

number of crimes of violence committed by Berkeley Negroes, only a small percentage of that population actually commits the crimes."

On this difficult and often-raised question, Berkeley Councilman Sweeney is especially articulate.

"There are already legally established provisions for the handling of lawbreakers," he says. "Manipulation and exclusion in housing is not a legitimate means of dealing with criminals. Would you deny all white men the right to live where they wish, because one white man commits a heinous offense? If a Negro commits a crime, jail him; do not punish him by denying fair housing to law-abiding Negroes."

"The really meaningful statistic (as Chief Fording suggests) is not what per-

centage of crimes are committed by Negroes, but what percentage of Negroes commit crimes—3 per cent? 5 per cent? 10 per cent? Even if 90 per cent of the Negro population were criminals, the other 10 per cent would still deserve the right to live where they choose.

"This ordinance does not force anyone to rent his home to a criminal—Negro or white. It merely gives the minority the same privileges so long enjoyed by the majority."

"What whites cannot seem to comprehend is that Negroes don't want their wives and children living next door to a rapist any more than a white man does. This law is not a license to let robbers, rapists, and murderers live in white neighborhoods. It simply seeks to prevent decent, law-abiding Negroes from being discriminated against because of the transgressions of a few—which has been a very convenient excuse for a very long time."

WHATEVER happens on April 2, one thing is certain: the eyes of the State are on Berkeley, and it is being watched closely. Already the issue has caught Governor Brown in an uncomfortable cross-fire within his own party.

Two weeks ago, State Assembly Speaker Jesse Unruh declared that if the Berkeley ordinance were defeated "and defeated badly," it would be a warning signal to "go slow" on civil rights legislation.

Defining his own program as one of "vigorous moderation — moving just as fast as the people will allow"—Unruh suggested that the defeat of such an ordinance in a community like Berkeley would indicate (1) that the public lacks understanding, and must receive more information on the integration problem, and (2) that the public is not ready to go as far as the Brown Administration suggests in the area of civil rights.

Assemblyman Byron Rumford, the Berkeley Democrat whose pending bill in the State Legislature has the backing of the Brown Administration, took sharp issue with Unruh.

So did Tom Carvey, president of the California Democratic Council Organizations, who accused Unruh of giving "ammunition to the enemy," by issuing "an open invita-

tion to the real estate lobby to pour its resources into the Berkeley referendum."

Carvey's words were prophetic. Behind a front organization calling itself the "Citizens League for Individual Freedom" — a coalition of Citizens United, the Berkeley Realty Board and other opposition groups — the realtors have launched a high-powered campaign, with a starting budget of \$15,000, to defeat the ordinance.

Not only members of the Berkeley Realty Board, but local boards throughout the State, have been asked for contributions to help beat the Berkeley law. The California Real Estate Association itself has pledged moral and financial support to the effort. And one member of the CREA told The Chronicle: "If we can



beat the ordinance in Berkeley, we're certain it will hammer the final nails into the coffin of the Rumford Bill."

Rumford's bill, like the Berkeley law, is a potent one: It proposes to ban discrimination in the rental or sale of private housing; establish a Commission on Intergroup Relations; and reconstitute the State FEPC as a Human Rights Commission — with enforcement powers to prevent discrimination in housing as well as employment.

As in Berkeley's ordinance, the law would provide a maximum penalty of a \$500 fine and six months in jail for anyone convicted of violating a commission order.

With his sweeping civil rights program jeopardized by its being made contingent on the Berkeley vote, Governor Brown insists he will press for prompt passage, regardless of what Berkeley voters do. But the fact remains, however Brown proceeds, that the Legislature is almost certain to interpret the fate of the Berkeley ordinance as a mandate from the people—one way or the other.

The Berkeley Story

nous offense? If a Negro commits a crime, jail him; do not punish him by denying fair housing to law-abiding Negroes."

"The really meaningful statistic (as Chief Fording suggests) is not what per-

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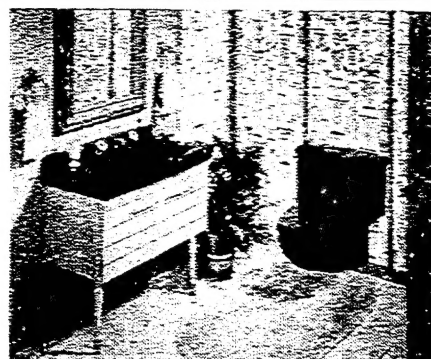
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